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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/319,222	08/23/1999	BJORN HEED	003300-570	2625

7590 04/21/2004

BENTON S DUFFETT JR  
BURNS DOANE SWECKER & MATHIS  
PO BOX 1404  
ALEXANDRIA, VA 223131404

EXAMINER
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CHOW, DOON Y

ART UNIT	PAPER NUMBER
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2675

DATE MAILED: 04/21/2004

21

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/319,222

Applicant(s)

HEED ET AL.

Examiner

Dennis-Doon Chow

Art Unit

2675

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21, 23, 25, 29, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura (5270810).

Nishimura discloses a viewing instrument comprising: an optical system for viewing objects and providing live images of the objects; a memory function to freeze a live image; control means for freezing the image; an electronic retinas; and a processing unit which connects to the retinas.

The viewing instrument is obviously a distance viewing instrument because the viewing instrument views the objects from a distant, even though the distant is a small distant.

3. Claims 22, 26, 30-32, and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura as applied to claims 21, 23, 25, 29, and 33 above, and further in view of Branson (5740801).

Nishimura does not disclose magnifying the frozen image.

Branson, in the same field, discloses a viewing instrument comprising means magnifying an image.

It would have been obvious to one of ordinary skill in the art to use Branson's magnifying means in Nishimura's instrument to magnify the frozen image. By doing so, the frozen image can be seen more clear.

4. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura as applied to claims 21, 23, 25, 29, and 33 above, and further in view of Satake et al. (5317399).

Nishimura does not explicitly disclose the use of a timer for controlling the time-interval of the frozen image. However, using a timer for controlling a time-interval of a frozen image is well known in the art as shown by Satake. Therefore, it would have been obvious to one of ordinary skill in the art to use the known timer in Nishimura's instrument. By doing so, the timing of the freezing image can be automatically controlled.

5. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura and Satake et al. as applied to claim 24 above, and further in view of Branson (5740801).

The above disclosures of Nishimura, Satake, and Branson applied here as well.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 21-23, 25-33 and 35-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Hammack et al (60088053).

Hammack discloses a binocular includes a digital video camera for capturing a live image of an object. The binocular further includes a memory function to freeze (store) the live image in a memory device and display means for displaying (freezing) the live image. The binocular also includes means for magnifying the frozen image, an electronic retina; and a processing unit which connects to the retinas.

8. Claims 24 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammack in view of Satake et al.

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Hammack does not explicitly disclose the use of a timer for controlling a time-interval of the displayed (frozen) image. However, using a timer for controlling a time-interval of a displayed (frozen) image is well known in the art as shown by Satake. Therefore, it would have been obvious to one of ordinary skill in the art to use the known timer in Hammack's binocular. By doing so, the timing of the displayed (frozen) image can be automatically controlled.

### ***Response to Arguments***

9. Applicant's arguments filed June 13, 2003 have been fully considered but they are not persuasive.

A new ground of rejection is introduced

Applicant argues that Nishimura does not teach the distance viewing instrument. The examiner disagrees because Nishimura's viewing instrument broadly read on the claimed distance viewing instrument. All the claimed distance viewing instrument required is a viewing instrument which views an object from a distant regardless length of the distant. This feature is obviously met by Nishimura's viewing instrument.


### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis-Doon Chow whose telephone number is 703-305-4398. The examiner can normally be reached on 8:30-6:00, Alternate Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Saras can be reached on 703-305-9720. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.

D. Chow  
April 15, 2004



DENNIS-DOON CHOW  
PRIMARY EXAMINER